LEGAL UPDATE

FB ATTORNEYS

24 July 2023

Public Private Partnership Act Amended

- Procedure for submission of potential PPP projects changed
- Mandatory incorporation of SPV in PPP projects introduced
- SPV shareholding requirements stipulated
- Restrictions on tax incentives removed
- Scope of dispute resolution options extended
- Monitoring and reporting requirements enhanced
- PPP Act takes precedence over other laws

In a bid to enhance participation of the private sector in Public Private Partnership (PPP) projects, the National Assembly, on 13 June 2023, passed the Public Private Partnership (Amendment) Bill, 2023. The said Bill was assented to by the President on 5 July 2023 and gazetted on 14 July 2023, hence officially making it the PPP (Amendment) Act, No. 4 of 2023. Consequently, the PPP (Amendment) Act and the Public Private Partnership Act, Cap. 103 [R.E. 2019] (the Act) should be read as one.

In so far as the procedure for submitting potential PPP projects is concerned, the amendments require every contracting authority, at the beginning of every budget cycle, to submit to the Minister for PPP a prefeasibility study of potential PPP projects for consideration in the National Development Plan. Thereafter, the Minister is obliged to forward the same to the PPP Centre for analysis. It should be noted that, prior to the amendment, the procedure was for the contracting authority to submit the above study directly to the PPP Centre.

As opposed to the Act which previously required execution of PPP project agreements after the bidding process, the amendments make it mandatory for the private party to incorporate a Special Purpose Vehicle (SPV) before signing the PPP agreements, in accordance with the Companies Act, for the purpose of undertaking the project. The established SPV may include a public entity as a minority shareholder with shares not exceeding 25% of equity contribution in the SPV. For a public entity, it is required to demonstrate financial capacity and ability to bear and mitigate risk associated with the implementation of the project for such an entity to hold shares in the said SPV.

Further, the Act formerly provided that a project undertaken in accordance with the provisions of the Act, which ought to qualify for benefits granted to similar investments under the Tanzania Investment Act, was entitled to such benefits granted under the Investment Act. However, such benefits did not include tax incentives. Following the amendments, the restriction of benefits to exclude tax incentives has been removed.

As far as dispute resolution is concerned, the Act previously allowed disputes to be resolved through negotiations or, in the case of mediation or arbitration, the same to be adjudicated by judicial bodies/organs established in Tanzania and in accordance with laws of Tanzania. However, now the amendments allow settlement of disputes, by mutual agreement between the parties, through arbitration in accordance with the rules of procedure for arbitration of the International Centre for Settlement of Investment Disputes (ICSID); or within the framework of any bilateral or multilateral agreement on investment protection entered into by the Government of Tanzania and the Government of the investor's country of origin.

As a way of monitoring performance and enhancing reporting, the amendments have added a layer of reporting by requiring the accounting officer of the contracting authority to submit an annual performance report on top of the mid-year report that was previously required to be submitted under the Act. Lastly, for avoidance of doubt, the amendments expressly provide that in case of any inconsistency between the provisions of the Act and the provisions of any other written law in relation to development, procurement and implementation of public private partnerships, the provisions of the Act should prevail.

To read the Public Private Partnership Act, Cap. 103 [R.E. 2019] click here

To read the Public Private Partnership (Amendment) Act, No. 4 of 2023 click here

For further information on legal updates please contact:

E: info@fbattorneys.co.tz

About FB Attorneys
FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 1 by Chambers and Partners General Business Law.

FB Attorneys
8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz